

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

MILTON BRATEN,

Plaintiff,

- against -

Index No. 07 Civ. 8498

ANSWER

ELIOT KAPLAN,

Defendant.

-----X

Defendant ELIOT KAPLAN ("Defendant"), by and through his attorneys, TRAUB LIEBERMAN STRAUS & SHREWSBERRY LLP, for his Answer in response to the Plaintiff's Verified Amended Complaint ("Complaint") herein, alleges the following:

BACKGROUND

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 1 of the Complaint.

2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 2 of the Complaint and respectfully refers the Court to the Order entered in the case of Milton Braten v. Eliot Kaplan, Docket No. 07 CIV 8498 (KMW) for the content thereof.

3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 3 of the Complaint.

AMENDED COMPLAINT

JURISDICTION

4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 4 of the Complaint.

5. Denies knowledge or information sufficient to form a belief as to the truth of the

allegations set forth in paragraph 5 of the Complaint, including subparagraphs (a)-(c).

6. In response to paragraph 6 of the Complaint admits that Defendant is a resident of the State of New York and is admitted to the Bar of the State of New York and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph.

Causes of Action

Relevant Events and Facts

7. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 7 of the Complaint.

8. Admits the allegations set forth in paragraph 8 of the Complaint and respectfully refers the Court to the alleged Agreement for the terms and provisions thereof.

9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 9 of the Complaint, including subparagraphs (a)-(f).

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 10 of the Complaint and respectfully refers the Court to the alleged Agreement for the terms and provisions thereof.

11. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 11 of the Complaint and respectfully refers the Court to the alleged Affirmation for the provisions thereof.

12. Denies the allegations set forth in paragraph 12 of the Complaint.

13. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 13 of the Complaint.

14. Denies knowledge or information sufficient to form a belief as to the truth of the

allegations set forth in paragraph 14 of the Complaint.

15. Denies the allegations set forth in paragraph 15 of the Complaint.

16. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 16 of the Complaint.

17. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 17 of the Complaint.

18. Denies the allegations set forth in paragraph 18 of the Complaint, including subparagraphs (a)-(e).

19. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 19 of the Complaint.

20. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 20 of the Complaint and respectfully refers the Court to the alleged Preliminary Conference Stipulation/Order for the terms and provisions thereof.

21. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 21 of the Complaint.

22. Denies the allegations set forth in paragraph 22 of the Complaint.

23. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 23 of the Complaint.

24. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 24 of the Complaint.

25. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 25 of the Complaint.

26. Denies knowledge or information sufficient to form a belief as to the truth of the

allegations set forth in paragraph 26 of the Complaint and respectfully refers the Court to the alleged Divorce Order for the terms and provisions thereof.

27. Denies the allegations set forth in paragraph 27 of the Complaint.

28. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 28 of the Complaint, including subparagraphs (a)-(c).

29. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 29 of the Complaint.

30. Denies the allegations set forth in paragraph 30 of the Complaint.

31. Denies the allegations set forth in paragraph 31 of the Complaint.

32. Denies the allegations set forth in paragraph 32 of the Complaint.

33. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 33 of the Complaint.

34. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 34 of the Complaint.

Malpractice

35. In response to paragraph 35 of the Complaint, repeats, reiterates, and realleges each and every response set forth in paragraphs 1 through 34, above, as if fully set forth herein.

36. Denies the allegations set forth in paragraph 36 of the Complaint, including subparagraphs (a)-(d).

37. Denies the allegations set forth in paragraph 37 of the Complaint, including subparagraphs (a)-(b).

Unjust Enrichment

38. In response to paragraph 38 of the Complaint, repeats, reiterates, and realleges each

and every response set forth in paragraphs 1 through 37, above, as if fully set forth herein.

39. Denies the allegations set forth in paragraph 39 of the Complaint, including subparagraphs (a)-(b).

40. Denies the allegations set forth in paragraph 40 of the Complaint.

Conversion

41. In response to paragraph 41 of the Complaint, repeats, reiterates, and realleges each and every response set forth in paragraphs 1 through 40, above, as if fully set forth herein.

42. Denies the allegations set forth in paragraph 42 of the Complaint, including subparagraphs (a)-(d).

43. Denies the allegations set forth in paragraph 43 of the Complaint.

Breach of Contract

44. In response to paragraph 44 of the Complaint, repeats, reiterates, and realleges each and every response set forth in paragraphs 1 through 43, above, as if fully set forth herein.

45. Denies the allegations set forth in paragraph 45 of the Complaint, including subparagraphs (a)-(c).

46. Denies the allegations set forth in paragraph 46 of the Complaint, including subparagraphs (a)-(d).

Fraud

47. In response to paragraph 47 of the Complaint, repeats, reiterates, and realleges each and every response set forth in paragraphs 1 through 46, above, as if fully set forth herein.

48. Denies the allegations set forth in paragraph 48 of the Complaint.

49. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 49 of the Complaint.

50. Denies the allegations set forth in paragraph 50 of the Complaint.
51. Denies the allegations set forth in paragraph 51 of the Complaint.
52. Denies the allegations set forth in paragraph 52 of the Complaint, including subparagraph (a).
53. Denies the allegations set forth in paragraph 53 of the Complaint.
54. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 54 of the Complaint.
55. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 55 of the Complaint.
56. Denies the allegations set forth in paragraph 56 of the Complaint, including subparagraphs (a)-(e).
57. Denies the allegations set forth in paragraph 57 of the Complaint.
58. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 58 of the Complaint.
59. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 59 of the Complaint.
60. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 60 of the Complaint and respectfully refers the Court to the alleged Stipulation/Order for the terms and provisions thereof.
61. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 61 of the Complaint.
62. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 62 of the Complaint.

63. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 63 of the Complaint.

64. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 64 of the Complaint.

65. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 65 of the Complaint.

66. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 66 of the Complaint.

67. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 67 of the Complaint and respectfully refers the Court to the alleged Affirmation and Reply Affirmation for the provisions thereof.

68. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 68 of the Complaint and respectfully refers the Court to the alleged Decision and Order for the terms and provisions thereof.

69. Denies the allegations set forth in paragraph 69 of the Complaint.

70. Denies the allegations set forth in paragraph 70 of the Complaint, including subparagraphs (a)-(f).

71. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 71 of the Complaint.

72. Denies the allegations set forth in paragraph 72 of the Complaint, including subparagraphs (a)-(b).

**AS AND FOR DEFENDANT'S
AFFIRMATIVE DEFENSES**

FIRST AFFIRMATIVE DEFENSE

73. The relief sought by Plaintiff is barred by the doctrines of laches, waiver and/or estoppel.

SECOND AFFIRMATIVE DEFENSE

74. The Complaint must be dismissed and/or remanded to New York Supreme Court for failure to satisfy diversity jurisdiction requirements pursuant to 28 U.S.C §1332.

THIRD AFFIRMATIVE DEFENSE

75. The Complaint is invalid, lacks legal sufficiency and is improper as it is not properly sworn to and fails to include a jurat.

FOURTH AFFIRMATIVE DEFENSE

76. Plaintiff has failed to mitigate his alleged damages.

FIFTH AFFIRMATIVE DEFENSE

77. At all times relevant hereto, the Defendant's alleged conduct did not proximately cause Plaintiff's alleged damages.

SIXTH AFFIRMATIVE DEFENSE

78. The Complaint must be dismissed in its entirety due to the Decision and Order of Hon. Kimba M. Wood dated October 2, 2007, annexed as an exhibit to the Complaint.

SEVENTH AFFIRMATIVE DEFENSE

79. The Complaint must be dismissed because it is barred by the statute of limitations.

EIGHTH AFFIRMATIVE DEFENSE

80. The Complaint must be dismissed because it fails to state a cause of action upon

which relief may be granted.

NINTH AFFIRMATIVE DEFENSE

81. Plaintiff's fraud allegation must be dismissed because it fails to state a claim for fraud upon which relief may be granted.

TENTH AFFIRMATIVE DEFENSE

82. The Complaint is barred by the doctrine of collateral estoppel.

ELEVENTH AFFIRMATIVE DEFENSE

83. The Complaint is barred by the doctrine of res judicata.

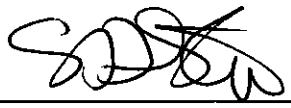
TWELFTH AFFIRMATIVE DEFENSE

84. All rights to assert additional affirmative defenses as warranted based on the results of further investigation and discovery in this matter are expressly reserved.

WHEREFORE, Defendant Eliot Kaplan demands judgment dismissing the Complaint, together with the costs, expenses, disbursements and attorneys' fees of this action, and for such other and further relief as this Court deems just and proper.

Dated: Hawthorne, New York
April 29, 2008

TRAUB LIEBERMAN STRAUS & SHREWSBERRY LLP

By: 
Stephen D. Straus (SDS 6183)

Mid-Westchester Executive Park
Seven Skyline Drive
Hawthorne, New York 10532
Tel. No. (914) 347-2600

Attorneys for Defendant

TO: Milton Braten
97415-071 Unit P2
FMC Devens
P.O. Box 879
Ayer, MA 01432

Plaintiff *Pro Se*